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town related to these rights and privileges, no separation did in fact take place, or, if it did, the old town must be regarded as holding the legal estate in trust for the inhabitants of both.

This case is wholly unlike the case between these parties, reported 34 Maine, 411, and cited for the plaintiffs, on which much reliance is placed in the argument. The distinction between the two cases is very clear. In that case the corporation which held the funds in trust was a private corporation, and, for that reason, not subject to legislative control. The attempt of the legislature to change the direction and application of funds so held, was very properly regarded as unconstitutional. It is very apparent from the reasoning and authorities cited in that case, that the court would have come to a different result, if the funds which were attempted to be divided by the legislature, had been in the hands of the town, and not in the hands of a board of trustees, to whom they had been conveyed in trust for specific purposes, by an act of the legislature of Massachusatts, passed in 1806. That case turns wholly upon the fact that the trustees of the fund were a private, and not a public corporation.

In view of all the facts in this case, we are of opinion that the defendant has established his justification, and is, therefore, entitled to a judgment in his favor.

NOTICES OF NEW BOOKS.

REPORT OF THE CODE COMMISSIONERS ON CIVIL PRACTICE, to the Eighth General Assembly of the State of Iowa. Des Moines, Iowa: John Teesdale, State Printer, 1859.

THE CODE OF CRIMINAL PRACTICE OF THE STATE OF IOWA: Reported by the Code Commissioners to the Eighth General Assembly. Prepared by WILLIAM SMYTH, one of the Commissioners. Des Moines, Iowa: John Teesdale, State Printer, 1860.

REPORT ON CODIFICATION AND REVISION OF THE GENERAL LAW: Made by the Code Commissioners to the Eighth General Assembly of the State of Iowa. Des Moines, Iowa: John Teesdale, State Printer, 1860.

DIGEST OF THE DECISIONS OF THE SUPREME COURT OF THE STATE OF IOWA: From the Organization of the Court in 1839 to 1860, including the Decisions not yet reported. By JOHN F. DILLON, one of the Judges. Davenport: Publishing House of Luse, Lane & Co., 1860, pp. 799.

We have all the above publications from the important State of Iowa. We propose, first, to give some notice of Judge Dillon's labors, and then a word as to the Code and the Revisers. Judge Dillon's primary object seems to have been to bring within easy access, chiefly for the bar of his

own State, her judicial determinations, which seems to have been a want seriously felt. Indeed, it is difficult to understand how the bar of any State can get along without digests of the Reports; they are the keys that unlock all the learning, though they are far from being all the learning itself. This work is intended for the active practitioner. "A principle," says the learned author, "may be stated in a line or two; but an adequate idea of the facts of a case cannot be thus briefly given. If attempted, it will be, at best, but a dry and lifeless abstract, unreliable from its vagueness and generality." . . . "I have inserted extracts from the opinions, or given the substance of the reasoning of the Court. With this view, I have, at times, made quotations from cases determined elsewhere, and which have been cited with approval by our Court."

Iowa has thirteen printed volumes of reports. All these volumes have a good reputation with the profession. We have had occasion more than once to examine Judge Greene's reports, and can bear testimony to their value from personal knowledge; and, from the abstracts and points exhibited in judge Dillon's Digest, we cannot doubt but the same may be said of all of the others. We have taken occasion to examine some titles—Bills and Notes, and Criminal Law, for example, these being important ones—and we must say that the editor's labors are most creditable. The abstracts are succinct and intelligible; the arrangements and subdivisions clear; and the continual references from one title to another most excellent and highly convenient. The side notes, containing a running summary, are a feature in this book, printed in the far west, from which publishers on the Atlantic board might learn a lesson. These notes always accompany an English law book; but, from motives of typographical economy, are generally omitted in American books. The side notes give you at a glance whatever the page may contain, and save many a weary eye-search amid a mass of type for the very thing the practitioner is seeking. We have taken some pains to read some of the larger and more important titles, and cannot withhold our praise both to the editor for the mind-work, and to the publishers for the hand-work: the fair white paper, the black ink, the well executed press-work, and the substantial binding.

We now turn from the law, as it is, to the law as the Codifiers and Revisers think it should be. The report of the Revisers has so much good sense in it that we cannot refrain from quoting some part of its language:

"To *codify the law*, is to state in a system, not only the law in force by

statute, but also that announced in decisions, as well as that not yet so announced, but remaining thus far the grand fund of common law, out of which new decisions are daily made. Such codification would be very desirable, but is not to be attained without the painful labor of many minds working in concert for many years. This was accomplished, as to part of the law under the inspiration of the great Napoleon, in the Code which bears his name, and which will live when Marengo and Austerlitz are forgotten. The attempt to *codify* all the law is being seriously urged in England, and has been actually entered upon in New York by a commission appointed for the term of seven years. The systems called Codes, as of Tennessee, Alabama, Virginia, North Carolina, Iowa, &c., are not codifications, in the sense in which the word is here used, except to a very limited extent. These are *revisions* of the statute law, with a further announcement of a few provisions of general law which have heretofore been expressed only in decisions. Codification aims to leave no law unexpressed in statute, to the end that the law may be read and known of all men, and the ex post facto result of judge-made law may thus be averted.

"There is a part of the law of every State which is peculiar to such State. It may exist elsewhere, but has not, for that reason, been adopted, —but, on the contrary, has been adopted because such State elected to enact it as adapted to its condition. Such is called political, police, or administrative law. There is, also, much other law which is not enacted, but is appropriated, as the occasion arises, from that foundation of municipal justice which we call the common law, and which has not been by such State expressly enacted. Our Code and its cognates include only the former kind of law, with a few of the principles which have heretofore been of the other kind.

"We think that this State is not ready for a codification of the former kind of law—its resources have not been yet sufficiently developed—its population has not yet become sufficiently compact. The wants met by such a kind of legislation are yet fluctuating, and, though rapidly developing, they are yet unfixed.

"This assertion might be predicated, a priori, upon a knowledge of the uneven diffusion of our population, and upon its steady and rapid growth, and the assumption is verified by the modifications suggested and made at each session of the General Assembly. We think that, as these men, who come biennially from each neighborhood in the State, yet fail in that kind of legislation to make such laws as remain long acceptable to the whole, we, but three men, without remarkable opportunities of observation, should more signally fail to recommend a system of this kind of law which would be wisely so adapted. The day for such a work will be when Iowa shall have much more fully expressed her legislative will in her statutes, and such statutes will form the basis of such a codification, which should be but their revision. It is true, regarding such law as we are speaking of, that it should *grow*, or, to speak less poetically, but more logically, it should be suggested by a well-defined existing public want, and be exexactly shaped to respond to it. To the codification of the other kind of law, the same objection does not obtain; for it is that kind of law which does not owe its fitness to the accidents of time and place, but rests on relations and rights, which are not qualified by the census, the population or depopulation of a State, or the rise or fall of a sovereignty. The objection to its codification is the enormous labor and time required, and the fact

that it is being attempted by older and better qualified States, whose labors or experience may, in the future, be a guide to us in this comparatively untried field. Such reasons deterred us from embarking in the endeavor of codification."

Large communities do not trust their vital legal interests to uninstructed men. The men of logical and trained minds—men with thorough legal educations, holding conservative opinions, will, sooner or later, in every community, command respect and carry into the details of practical life the results of their matured understanding. The gentlemen chosen by the legislature of Iowa, Messrs. Smyth, Barker, and Darwin, have most wisely not attempted any brilliant theories of law; but, resting on the safe foundations of the received experience of the past and present, have simply made such changes as the necessities of the people of the State of Iowa *now* required, leaving it to the future to provide for its own needs when they shall arise.

The labors of Mr. Darwin in the notes appended to Civil Code, p. 177, on the subject of Pleading, and Evidence, p. 261, deserve some special notice. Mr. Darwin favors the Pennsylvania system of having law and equity administered by the same tribunal, and equity pleadings made brief and intelligible, and stripped of all verbiage. He also favors the present English system of allowing parties to be witnesses in their own causes, and he argues the matter in a logical, as well as historical, style, and perhaps his argument may be taken as a fair exponent of the present tendency of the professional mind. Nowhere does there seem to be a more determined desire to cut off and grub up the dead wood of the common law than in the great communities of the far west, where the sure touchstone of the *practical* is applied with an equally rigorous logic alike to legislation and mechanics. This Civil Code has been prepared after careful study of the Codes of the different States, and its suggestions are such as will interest the profession everywhere, however much any reader may be unwilling to engraft it into jurisprudence.

The Criminal Code was prepared by Mr. Smyth, and does not contain such elaborate notes and remarks as the Civil Code, and the Revisers do not seem to have been unanimous in their views. Mr. Barker, in a brief but well-written note, dissents from some of the changes proposed. We intend to note this Criminal Code in connection with our own commissioners report to revise the Criminal Code of this State at some future time, when our limits will not be so circumscribed as they now are by the unreasonable length of this article.